

2009 Best Practices Tip

Documenting Performance Issues: Use Caution in the Use of the Term “Unsatisfactory”



When documenting reasons for separation there is the potential to mislabel certain performance issues as “unsatisfactory” when this will be perceived by the state to mean unable to perform and will likely result in benefits awarded to the claimant. State unemployment agencies put a specific meaning on the word “unsatisfactory.” It is taken to mean “could not perform satisfactorily” or, in effect, “not qualified.” Unemployment benefits are designed to be paid to people out of work through no fault of their own. People who accept work with the good intentions of performing it, but who are incapable of performing up to company standards or who lack

the training or experience to do so are paid unemployment when discharged for that reason.

Following is an excerpt from a hearing ruling detailing a definition of misconduct.

“... there is an element of intent associated with a determination of misconduct; mere inefficiency, unsatisfactory conduct, failure of good performance as the result of inability or incapacity, inadvertencies, ordinary negligence, or good-faith errors in judgment or discretion are not considered misconduct for unemployment insurance purposes unless it is of such a degree or recurrence as to manifest culpability, wrongful intent evil design, or an intentional or substantial disregard of an employer's interest or of an employee's duties and obligations.”

If a person is negligent, derelict in performing his/her duties, deliberately failing to follow procedures or take direction, while the word unsatisfactory may seem to apply, using it could lead the state agency into improperly thinking the person was discharged for inability to perform satisfactorily. If you are discharging someone who you believe is qualified for the job (and/or who has demonstrated the ability to perform satisfactorily in the past) you should view it as a discharge “for cause” and avoid using the words “performance or “unsatisfactory.” If the reason is failure to follow known procedures, phrases like “deliberate failure to follow procedures” are appropriate. Negligence of duty can be labeled as such. Documented and described properly, quite a few of these separations will lead to an appropriate disqualification from unemployment benefits. Improperly described and you may be paying unemployment benefits to someone who deliberately failed to perform the duties of the job.

One additional very important item, once you have clearly determined that an individual is simply not qualified for the job and unable to meet performance standards, from an unemployment standpoint, the individual should be let go as soon as possible since the longer they are employed, the higher your unemployment liability will be. Such reductions in liability, if significant enough, can actually either lower or protect you from increases in your unemployment taxes on all employees (or in the case of reimbursers, possibly eliminate the need for a direct reimbursement for benefit charges).